IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6058 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GEB POWER ENGG. ASSO. OFFICE

Versus

THE SECRETAY AND HIS SUCCESSOROFFICER

Appearance:

1. Special Civil Application No. 6058 of 1986

MR DS VASAVADA for Petitioner No. 1-2

MR SP HASURKAR for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL JUDGEMENT

1. The petitioners, by way of this petition, sought the direction directing the respondent Board to promote

the petitioner to the post of Deputy Engineer with deemed date considering the promotion rules and also prayed for to pay all consequential monetary benefits with interest and seniority with retrospective dates.

2.1. The petitioners state that the petitioner no.2 had joined the services of the respondent-board as Graduate Apprentice on 16.10.78 and was taken as Junior Engineer after completion of one year i.e. from 16.10.79. Since then the petitioner is working as Junior Engineer. During period of one year as apprentice, the petitioner was posted against regular sanctioned post.

2.2. The petitioner was sent for training at Dhuvaran Training Centre by the Board and the petitioner has successfully completed the training. The petitioner was confirmed as Junior Engineer from 16th April, 1980. It is the case of the petitioners that though the petitioner no.2 was entitled for promotion to the post of Deputy Engineer but due to the adverse remarks of the years 1981 and 1984 which he has reproduced at page 30 which reads as under :

"Details of Remarks :
1981 : (1) Does not take initiative but requires specific instructions.
(2) Limited knowledge of the job to be able to perform his duties.
(3) Limited interest in his works.
1984. (1) Does not take initiative but requires specific instructions.
(2) Limited interest in his works."

He was not considered for promotion.

2.3. Mr.Vasavada for the petitioners submitted that criteria for promotion is seniority-cum-merit basis and 40% were reserved for degree holder and that the petitioner no.2 being the degree holder is entitled for promotion.

2.4. Mr.Vasavada also submitted that even as per the policy of the respondent Board from Junior Engineers to Deputy Engineers the degree holders will be governed by amendment no.2 to GSO 7 and will be given promotion as per the seniority and therefore the petitioner no.2 ought to have been given promotion on the basis of the Board circular dated 7th/8th January, 1985.

2.5. It is the case of the petitioners that though as per the last GR of 1985, only the seniority is to be considered for promotion to the post of Deputy Engineer. He submitted that assuming without admitting that if the seniority-cum-merit is considered, even then the adverse remarks which are given to the petitioners are not of positive demerit and therefore petitioner no.2 has been wrongly deprived of his promotion to the post of Deputy Engineer.

3. The respondents have appeared and they have filed their reply opposing grant of any relief. It is the say of the respondent that the petitioner no.2 never met with any positive demerit, on the contrary, adverse remarks were conveyed to petitioner no.2 for the years 1981, 1982 and 1984, against which he had preferred an appeal in respect of the adverse remarks for the years 1981 and 1984. The said appeals were rejected and even subsequently for the years 1985, 1986 and 1987 his confidential reports were clear and he has been promoted as Deputy Engineer in 1988 and the petitioner has reported for duty on 29.04.1988.

4. Mr.Vasavada learned counsel for the petitioners has strongly placed reliance on the judgment of this Court wherein this Court has held that where there is a question of criteria for promotion is seniority-cum-merit, then unless there are positive demerits in the case of an employee, he should be considered for promotion, to which first judgment is in the case of Kum.Sudhaben Vishnuprasad Shukla V/s Regional Passport Officer, Ahmedabad and another, reported in 1983(2) GLR 1297 and other judgment is in the case of S.R.Pandey V/s State of Gujarat and others, reported in 1984 GLT 118.

5. From the averments which are made in the petition, it appears that the petitioner no.2 was not considered for promotion, the day on which respondent nos. 3 to 5 were promoted. Therefore, respondent no.1 will reconsider the case of petitioner no.2 and will consider his case for Deputy Engineer as on 12.09.1986 on the basis of the criteria laid down by the respondent at Annexure `C' and Annexure `C-3'. The said exercise should be completed within a period of three months from receipt of this order.

6. Though respondent no.2,3 & 4 were served, they have chosen not to appear. If they are adversely affected by this order, respondent no.1 will serve them copy of this judgment within three days from the date of

receipt of this order and it will be open for respondent no.2,3 & 4 to approach this Court by way of appropriate application within thirty days from the date of receipt of the copy of the order from respondent no.1.

7. This petition is allowed. Rule is made absolute to the aforesaid extent with no order as to cost.

(K.S.Jhaveri, J)

(pathan)